In my judgment, the third defendant was in fact travelling in the extreme left lane near the edge of the road from where his view of the junction was blocked by SBS 1221. The plaintiff was in a hurry to get to Jurong, as she admitted to the second defendant immediately after the accident when she was still in a daze. The third defendant, who was giving her a lift, was therefore travelling at a speed in excess of the speed limit. Just before he reached the junction, the traffic lights turned against him. He was then unable to stop, but he thought there was time to cross the junction, went into the junction, and then collided with the bus as it was beginning to turn, with disastrous consequences to himself and the plaintiff. The accident was caused solely by his negligence, and the second defendant was not to be blamed at all. The fact that she did not see the scooter before the collision is explained by her having turned her attention towards the right, after the green arrow had appeared and she had begun to turn her bus to the right. The third defendant will therefore be liable to the plaintiff for the whole of the general and special damages, and for her costs to be taxed.

Order accordingly.

Solicitors: *Rajah & Tann; Goh Poh & Partners; Jeanny Ng.*

Reported by *Azra Moiz*

Public Prosecutor v Koh Swee Beng

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 1 OF 1989
CHAN SEK KEONG J AND TAN TEOW YEOW JC
20 APRIL 1990

Criminal Law — Murder — Grave and sudden provocation — Whether accused lost self-control — Accused's code of honour required him to take revenge — Penal Code (Cap 224, 1985 Ed), s 300

The accused was charged with murder under s 302 of the Penal Code. The deceased died from two stab wounds inflicted by the accused, either of which in the ordinary course of nature would have been sufficient to cause death. The accused claimed that he acted under grave and sudden provocation. He had heard that the deceased had assaulted T, whom he (the accused) treated like his own father as T is his sworn brother's father. The accused stated that he practised a code of conduct which required him to come to the aid of his sworn brothers or his family, no matter what the consequences were. The accused also claimed that he was provoked when the deceased abused him in Hokkien. It was submitted that in the society in which the accused lived, based on his past experiences and his code of honour, any reasonable man in his position would have been provoked and acted in the way that the accused did.

Held, convicting the accused:

(1) Considering the circumstances in which the wounds on the deceased were inflicted (during a struggle in which six persons were assaulting the deceased), the court was of the view that the accused intended to stab the deceased, and he did so with considerable force. The injuries inflicted were sufficient in the ordinary course of nature to cause death.

(2) The prosecution had thus proved beyond reasonable doubt that the accused's actions fell within limb (c) of s 300 of the Penal Code.

(3) The evidence also showed that when the accused first heard of the assault on his family, he did not lose self-control entirely but had the presence of mind to arm himself with a knife. When he confronted the deceased, he had the presence of mind to tell another person to snatch stools from the deceased.

(4) When the accused caught up with the deceased, the latter was struggling on the ground against the assault of four or five persons. When the accused stabbed the deceased, the latter did nothing that could be considered as provocative to an ordinary reasonable person, taking into account the accused's age and class of society from which he came. The other persons assaulting the deceased did not lose their self-control. The collective injuries they inflicted were not serious in comparison even with the non-fatal injuries inflicted by the accused.

[*Editorial Note*: The accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 6 of 1990.]

Legislation referred to
Penal Code (Cap 224, 1985 Ed) ss 299, 300

Lee Sing Lit for the Public Prosecutor.
Kelvin Lim for the accused.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): You, Koh Swee Beng, is charged with the murder of one Tay Kim Teck ('the deceased') on 16 February 1988 at about 4.12pm at Block 66, Jalan Tiong, Singapore, an offence punishable under s 302 of the Penal Code (Cap 224, 1985 Ed).

The prosecution has adduced the following evidence in connection with the killing of the deceased. On 16 February 1988, which was the eve of Chinese New Year, one Tan Ai Soon ('TAS'), who was then living at Block 55, Lengkok Bahru #12-431, was assaulted by the deceased at about 4pm during a card game known as 'See Kee Puay' which was being played in the market situated in Block 55A. He suffered injuries to his nose and his ribs. An unknown male Chinese helped TAS back to Block 55, and there TAS was met by his future son-in-law, one David Poi Thiam Eng. TAS was then smelling of liquor and bleeding from the mouth and his eyes were swollen. David and the other male Chinese then brought TAS back to his flat. At that time, the following persons were in the flat: TAS's wife, his three sons and two daughters, viz Tan Eng Poh ('Ah Poh'), Tan Eng Geok ('Ah Geok'), Tan Eng Chai ('Ah Chai'), Tan Eng Suan and Tan Eng Eng. TAS

informed his children that he had been assaulted by someone when he was gambling but he did not know who it was. Tan Eng Suan's husband, viz Ng Eng Guan (aka Kew Moh), who was then playing mahjong in a friend's flat, also came to TAS's flat when he was informed by someone of the assault. A neighbour had by then called for an ambulance. When the ambulance arrived, the three sons and the son-in-law rushed downstairs to look for their father's assailant.

The case for the prosecution is founded substantially on the admissions made by you in a voluntary statement which you made to the police on 14 March 1988. At the time of the incident, you were drinking in your friend's flat #09-405 when your friend's son informed you that someone had telephone that Tan Eng Chai's father, TAS, had been assaulted by someone. You were furious when you heard this. The reason for your fury was that Ah Chai's brother, Ah Huat, was your 'sworn' brother and also that you knew the family members of TAS well as you had visited them often. You then rushed downstairs where at the lift you saw TAS being assisted by two persons. You were able to see, at a glance, that there was blood on the face of TAS. You then went out to the shophouses and there saw Ah Chai. You told Ah Chai to go upstairs to look for Ah Huat which he did. You then went to the market, ie Block 55A, and asked a stallholder who sold joss sticks whether he knew who had assaulted TAS (whom you described as a 'middle-aged man'). The stallholder said he did not know whereupon you came out of the market to the pedestrian footpath. While you were in the market you went to the first floor to look for something to arm yourself with and happened to see a knife at one of the stalls which was closed. You tucked it behind your waist.

Outside, you saw the deceased holding a stool in each hand. You knew his name was Kim Teck and that he was an illegal moneylender and a drug addict, although you did not know him personally. You bore no grudge against him. At about 10m from the deceased, you asked him in a loud voice why he had assaulted TAS so severely, to which he replied in vulgar Hokkien and told you that it was none of your business. He then told you to call the family members of TAS down to talk to him. At about this time, two flower pots were thrown down from Block 55 near to where you were standing. The pots did not hit anyone.

By that time, one Ong Hong Thor, who in your statement you said was another sworn brother of yours, was standing some distance from you. Ah Geok was also near you. You told Ah Geok to snatch the stools from the deceased, but before he could do so, the deceased took to his heels. At the same time you saw Ah Poh followed by Kew Moh coming down the staircase. In your statement you described the subsequent events in the following words:

> ... When Kim Teck ran, Ah Geok immediately gave chase and followed by Ah Chai who was standing nearby. Tua Lang Par (Ong Hong Thor) also followed suit and chased Kim Teck. Ah Poh (Tan Eng Poh) and Kew Moh (Ng Eng Guan) on seeing this also followed to give chase. I finally also gave chase and was the last person to do so. There were six of us in fact chasing Kim Teck. Kim Teck was running towards the direction of Lengkok Bahru and shortly he crossed the road and headed towards the direction of Block 66, Jalan Tiong. When I was giving chase, the knife which I was armed with, was still tucked behind my waist. The knife I was armed with was about 23cm long and the blade itself is about 13cm long.
>
> I saw Kim Teck running down the flight of steps between Lengkok Bahru and Block 66 and 67, Jalan Tiong. I ran down the flight of steps beside Block 67, Jalan Tiong. I ran beside Block 67, Jalan Tiong and Kim Teck was still in my view. Kim Teck was running between Block 66 and 67, Jalan Tiong along the badminton court. The others were chasing him in the same direction.
>
> On reaching the grass patch beside the grass slope just next to Block 66, Jalan Tiong, I saw Ah Geok and Ah Chai had already caught up with Kim Teck and they were assaulting him. Ah Geok was using a stool whilst Ah Chai was using the skeleton of an umbrella. Kim Teck was already lying on the grass patch when Ah Geok and Ah Chai were assaulting him. I would not know as to how Kim Teck fell when he was assaulted. I could not see clearly as to which part of Kim Teck's body Ah Geok and Ah Chai were assaulting as I was still running towards their direction. When I reached the grass patch, Ah Poh, Kew Moh and Tua Lang Par had also arrived at about the same time. When I reached the grass patch, I took out the knife which I was carrying. I rushed forward towards the deceased who was still lying down and struggling with his hands to avoid the blow, and stabbed him with the knife I was armed with. I stabbed Kim Teck at the region of his hand and leg and also at other parts of his body which I cannot remember now. I remembered that I had stabbed Kim Teck about four times, two of which are on his hand and leg and the other two times I cannot remember at which part of Kim Teck's body. When I was in the act of stabbing Kim Teck, Ah Poh had taken a flower pot and threw it onto Kim Teck's head. The others were also assaulting Kim Teck but I cannot remember the part they played during the assault. After I had stabbed Kim Teck, he was still moving. I then heard one of us shouting to run away from the scene. On hearing this, I took to my heels and so did the others but we ran in different directions. I was still holding the knife in my left hand. I did notice some blood on the knife which I was carrying when I was running away.
>
> I carried on running until I reached Block 72, Redhill. I then threw the knife I was holding into a dust-bin nearby which was located at the rubbish jump. After throwing the knife, I took a taxi to my girlfriend's house at Block 89, Redhill Close, #12-456.

You also gave a s 122(6) statement on 10 March 1988 in which you stated that 'We did not have the intention to kill him. I have nothing else to say.'

The deceased died from the stab wounds inflicted by you. The pathologist's report listed 16 external injuries, of which five were caused by a knife. They were:

4 Shallow stab wound 1cm at right clavicular fossa.
5 Stab wound 3cm long on the front of left chest went in through the fourth intercostal space in a downward

direction from left to right cutting through the lower part of the upper lobe of left lung cutting the pericardium and the left atrial appendage. The depth was 14cm. There was 1 litre of blood in the left chest.

6 Stab wound 3cm at the back of the left chest went into the chest through the seventh intercostal space from below upwards cutting the pleura at posterior mediastinum and cut into the thoracic aorta about 4cm below the arch. There was blood in the posterior mediastinum. The total depth was 11cm.

7 Through and through stab wound on the left forearm. The entry wound was 3cm on the radial side and the exit wound was 2cm on the ulna side.

8 Through and through stab wound on the left calf the entry wound was 3cm on the outside and the exit wound was 2cm on the inside.

Prof Chao, the pathologist, testified that wound Nos 5 and 6 were caused by the same instrument, which he described as being consistent with a knife with sharp edges of 3cm width and tapering at the end. He also testified that either of stab wound Nos 5 and 6 was sufficient in the ordinary course of nature to cause death. He certified the cause of death as haemorrhage from stab wounds in chest.

The evidence adduced by the prosecution was sufficient, if unrebutted, to convict you on the charge of murder, and so we called for your defence.

The account of the incident you gave in the witness box of your confrontation with and your stabbing of the deceased was substantially what you had stated in your statement. However, in your testimony, you made certain statements and admissions which are relevant to the assessment of your defence. You said that you treated TAS as your father as you were close to his son and that you would visit TAS now and again. We should add here that TAS in his evidence said that you were his 'foster' son. You also said that as a 'sworn brother' you have an obligation to come to the assistance of your sworn brother and members of his family in case of need no matter what the consequences would be. You admitted that when you were told about the assault, you did not know why TAS was assaulted and how badly he was assaulted. You were not told that TAS was assaulted with a weapon. You claimed that on your way down to the ground floor, you went to the seventh floor flat of Ong Hong Tor where you took a knife from a bag which was then in the flat and that the knife was only used on fishing trips. You said that you took the knife, which you admitted was a dangerous weapon, for self-protection as you claimed that in 1985 when you came to the aid of your father who was the victim of an assault you were also assaulted. You said that when the deceased uttered the abusive words, you became more furious, that when the flower pots were thrown down, you moved away to take shelter, and that when you came to stab the deceased you did it at random as you had lost your self-control. However, when you were cross-examined by the DPP you agreed that you had no cause to fear the deceased when he started to run away and when he was struggling on the ground just before you inflicted the fatal stabs on him. You also admitted that just before the stabbing took place, you did not know whether the deceased had said anything to you. Under cross-examination, you also said that you did not know whether you had lost your self-control at that time, but when you were re-examined by your counsel, you said that you were so provoked by the cumulative events that you had lost your self-control. You also claimed that you had no intention to kill the deceased when you stabbed him and that it did not occur to you that the act of stabbing was sufficient in the ordinary course of nature to cause death, that you were confused and did not think of the consequences.

In his closing submission, your counsel did not address the court on the ingredients of the offence of murder but relied on the defence of provocation. Under the law, culpable homicide (which is defined in s 299 of the Penal Code as 'Whoever causes death by doing an act with the intention of causing death, or with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide') is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation. Your counsel submitted that the provocation caused to you by the deceased was such grave and sudden provocation on the following grounds: (1) you heard that TAS, whom you treated like a father and one of whose sons was your 'sworn brother', was severely assaulted, as a result you were furious; (2) you lived by and practised a code of conduct to come to the aid of any of your sworn brothers or members of his family, no matter what the consequences might be, and you acted out of a sense of loyalty; (3) you were again provoked when the deceased abused you in vulgar Hokkien and told you to mind your own business. On account of these three factors, your counsel has submitted that the provocation as still continuing when you stabbed the deceased and that the stabbing was proportionate to the provocation.

Your counsel has also submitted that in the society in which you lived, your 1985 experience and your code of honour, any ordinary reasonable man in your position would have been provoked and would have reacted in the way you did. We were asked to have regard to your sex and age of an ordinary person sharing the same characteristics referred to above.

The DPP has submitted that on the evidence you were guilty as charged under limb (a) of s 300 of the Penal Code in that you stabbed the deceased with the intention of causing death or, in the alternative, under limb (c) in that the stabbing was done with the intention of causing bodily injury and that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause

death. In the circumstances in which the wounds were inflicted, ie during a struggle in which six persons were assaulting the deceased, we are of the view that you might not have specifically intended to kill the deceased, but we are satisfied that on the evidence, you intended to stab the deceased with the knife in the chest and the back which you did with considerable force, and the bodily injuries you inflicted were sufficient in the ordinary course of nature to cause death and did cause the death of the deceased. We are of the view that on the evidence the prosecution has proved beyond a reasonable doubt that your action in stabbing the deceased fell within limb (c) of s 300 of the Penal Code.

As to the defence of provocation, the DPP has submitted that on the evidence there was no provocation, or no grave and sudden provocation or, in any case, the retaliation was not proportionate to the provocation. The DPP referred to the following factors: (1) you had the presence of mind to arm yourself with a knife; (2) you did not know the cause of the assault or how seriously TAS had been assaulted; (3) although the deceased replied in abusive language and told you to mind your own business, it was insufficient to provoke you or to amount to grave and sudden provocation; (4) when the deceased ran away, you did not need to protect yourself; (5) you were about the last person to reach the deceased when he was being assaulted by the Tan brothers and before you stabbed the deceased, he did not offer any provocation to you, nor were you in fear as he was already struggling on the ground against five persons and yourself; (6) the Tan brothers did not find it necessary to use dangerous weapons to assault the deceased to teach him a lesson for assaulting their father, but you found it necessary to use a knife.

Having considered the submissions of your counsel and that of the DPP in the light of the evidence adduced against you and the evidence you have offered in defence, we have come to the conclusion that, although as a 'foster' son and a 'sworn brother', you must have felt a great deal of anger towards the deceased, and was therefore provoked at the time you were told of the assault, there was either no provocation or no sudden and grave provocation caused to you at the time the wounds were inflicted. In our view, the evidence shows that when you first heard of the assault, you did not lose your self-control entirely but had the presence of mind to arm yourself with a knife, that when you confronted the deceased and when he used abusive language against you, you were not sufficiently provoked to lose your self-control by attacking him there and then. In fact, you again had the presence of mind to tell Ah Geok to snatch the stools from the deceased. In our view, any provocation which would have caused you to lose your self-control at that time ceased when the deceased ran away and when he was being chased by the Tan brothers.

Furthermore, by the time you caught up with the deceased, he was struggling on the ground against the assault of four or five persons, and when you stabbed him, he did nothing which could be considered as provocative to any ordinary reasonable person, taking into account your age and the class of society from which you came. The Tan brothers did not lose their self-control when they assaulted the deceased in retaliation for the assault on their father. The injuries collectively inflicted by them were not serious in comparison even with the non-fatal injuries inflicted by you. We are unable to find that you were so provoked as to lose your self-control when you inflicted the fatal wounds on the deceased with a knife. We do not accept that you are entitled by your code of honour to react the way you did, which was wholly disproportionate to any provocation that could have been caused to you.

Accordingly, we find that on the balance of probabilities you have failed to prove the defence of provocation under the law. We find you guilty of murder and we convict you as charged.

Accused convicted.

Solicitors: *Tan Lee & Choo.*

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Lim Kian Tat

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 21 OF 1988
LAI KEW CHAI AND CHAN SEK KEONG JJ
27 MARCH 1990

Criminal Procedure — Statements — Admissibility — Whether made voluntarily or under circumstances of oppression

The accused was charged with the murder of a Caucasian girl. The deputy public prosecutor sought to admit three oral statements and two written statements allegedly made by the accused. Expert witnesses were also called by the prosecution.

Held, acquitting the accused without calling on his defence:

(1) The reliability of the first oral statement depended on the memory of one of the policemen as there was no record of it anywhere. It was not given in evidence at the preliminary inquiry but was reduced into writing nearly three years later. The court was not satisfied beyond reasonable doubt that the statement was that of the accused.

(2) The third oral statement was made by the accused after two periods of interrogation of six to seven hours each. The court was satisfied that the accused was tired and confused.

(3) The fourth (written) statement was made during an 18-hour interrogation. The court was satisfied that there had been oppression. The fifth (written) statement was made after